

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
MONDAY, AUGUST 23, 1999**

1

Crim. THE PEOPLE (Not for Publication)

No. v.

C026402 JAY STEWART MILLER

The judgment is affirmed.

NICHOLSON, J.

I concur: CALLAHAN, J.

I dissent: BLEASE, Acting P.J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
MONDAY, AUGUST, 23, 1999 CONTINUED**

2

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C028699 JAMES DARNELL SMITH

Defendant is awarded 276 conduct credits instead of 82 conduct credits. As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment accordingly and to send a copy of the amended abstract of judgment to the Department of Corrections.

CALLAHAN, J.

We concur: DAVIS, Acting P.J.  
NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C028605 KRISTEL MARIE HART

It is ordered that the published opinion filed herein on July 23, 1999, be modified as follows:

...

There is no change in judgment.

The petition for rehearing is denied.

(CERTIFIED FOR PUBLICATION)

NICHOLSON, Acting P.J.

KOLKEY, J.

I would grant the petition.

HULL, J.

Civil TROY WILLIS et al.  
No. v.  
C032773 RICHARD NORTHCUTT  
BY THE COURT:

The trial court notified this court that appellants failed to file a timely designation as provided for by rules 5 and 10 of the California Rules of Court. However, this court's order of July 21, 1999, incorrectly dismissed the appeal for failure to pay for preparation of the record. Good cause appearing. The order of July 21, 1999, dismissing the May 25, 1999, is vacated. It is further ordered that the appeals filed May 25, 1999, and June 18, 1999, are dismissed for failure to designate the record pursuant to rules 5 and 10 of the California Rules of Court.

Dated: August 23, 1999

SCOTLAND, P.J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
MONDAY, AUGUST, 23, 1999 CONTINUED**

3

Crim. THE PEOPLE (CERTIFIED FOR PARTIAL PUBLICATION)  
No. v.  
C029002 ROBERT NELSON ATKINS  
The judgment is reversed.  
DAVIS, J.  
We concur: SIMS, Acting P.J.  
RAYE, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C030793 STEVEN EUGENE SHUMPERT  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We concur: SCOTLAND, P.J.  
RAYE, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C029274 JERRY KING  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We concur: RAYE, J.  
CALLAHAN, J.

TUESDAY, AUGUST 24, 1999

Civil In re the Marriage of CAROL and KEVIN KNIGHT  
No. v.  
C027292 KEVIN WEAVER KNIGHT  
BY THE COURT:  
Appellant's petition for rehearing is denied.  
Dated: August 24, 1999  
SCOTLAND, P.J.

## 4

Civil DONALD HARTLEY (Not for Publication)  
No. v.  
C031320 SEARS, ROEBUCK & COMPANY  
The judgment is affirmed.  
We concur: NICHOLSON, J.  
RAYE, J.

PLEASE, Acting P.J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C030708 TIMOTHY SCOTT SEYMOUR  
The judgment is affirmed.  
NICHOLSON, J.  
We concur: DAVIS, Acting P.J.  
KOLKEY, J.

Civil                NICHOLAS CASELLA                                (Not for Publication)  
No.                  v.  
C025509         ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY  
                    The judgment is affirmed.

SCOTLAND, P.J.

We concur:               BLEASE, J.  
                                 NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)  
No. v  
C030319 JOHN WAYNE PRICE  
The judgment is affirmed.  
SCOTLAND, P.J.  
We concur: BLEASE, Acting P.J.  
CALLAHAN, J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
TUESDAY, AUGUST 24, 1999 CONTINUED**

5

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C030545 DELANE FRANCIS WETZEL

The judgment is modified by striking the section 1202.45 restitution fine. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the department of Corrections.

KOLKEY, J.

We concur: SCOTLAND, P.J.  
HULL, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C029834 MICHAEL DAVID WINGER

The judgment is affirmed.

NICHOLSON, J.

We concur: SCOTLAND, P.J.  
CALLAHAN, J.

Civil MARY DELLY MELINDES  
No. v. (Not for Publication)  
C029602 CITY OF STOCKTON et al.

The judgment is affirmed.

NICHOLSON, J.

We concur: SCOTLAND, P.J.  
HULL, J.

Civil R & L BROSAMER, INC.  
No. v. (Not for Publication)  
C030603 DEPARTMENT OF TRANSPORTATION

O. C. JONES & SONS et al.

The judgment is affirmed.

NICHOLSON, J.

We concur: DAVIS, Acting P.J.  
KOLKEY, J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
WEDNESDAY, AUGUST 25, 1999**

6

MISC. ORDER  
99-07

BY THE COURT

Associate Justice Richard M. Sims III is appointed to serve as Acting Presiding Justice to discharge the duties described in Rules 75, 76, 77 and 78 of the California Rules of Court during the absence of the Presiding Justice from the court on August 30, 1999, or until his return. (See Cal. Const. Art 6, Sec. 3.) The senior member of a panel of the Court is designated the Acting Presiding Justice of that panel during the absence of the Presiding Justice.

Dated: August 25, 1999

SCOTLAND, P.J.

Civil            INTERNATIONAL BILLING SERVICES  
No.            v.            (Not for Publication)  
C027450      NORTH AMERICAN CAPITAL et al.

The judgment is affirmed. Plaintiff is to pay defendants' costs on appeal.

MORRISON, J.

We concur:        NICHOSLON, Acting J.  
                     HULL, J.

Crim.            THE PEOPLE            (Not for Publication)  
No.            v.  
C030972      CARL LOUIS JOHNSON

The judgment is affirmed.

HULL, J.

We concur:        SCOTLAND, P.J.  
                     NICHOLSON, J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
THURSDAY, AUGUST 26, 1999**

7

Civil            In re Marriage of DIANA QUILICA and GARRETT BURKHART  
No.             DIANA L. QUILICI  
C029718       v.  
                  GARRETT BURKHART  
                  BY THE COURT:

                  Appellant's request to publish the opinion filed on July 29, 1999, is denied.

Dated:            August 26, 1999

SCOTLAND, P.J.

Crim.           THE PEOPLE  
No.             v.  
C032289       JACK LEWIS ZUREK  
                  BY THE COURT:

                  Pursuant to the written request of the appellant, the appeal filed April 1, 1999, is dismissed. It is further ordered that the remittitur issue forthwith. (See Cal. Rules of Court, rule 38.)

Dated:            August 26, 1999

SCOTLAND, P.J.

Civil            GINA D. CARMICHAEL  
No.             v.  
C033464       PAT DUPLCHAN, as Director, etc. et al.  
                  BY THE CORUT:

                  On the court's own motion, the appeal filed on August 18, 1999, is dismissed. (Van Beurden Ins. Services, Inc. v. Customized Worldwide Ins. Agency, Inc. (1997) 15 Cal. 4<sup>th</sup> 51, 56; California Rules of Court, rule 2(a).)

Dated:            August 26, 1999

SCOTLAND, P.J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
THURSDAY, AUGUST 26, 1999 CONTINUED**

8

Crim. THE PEOPLE  
No. v.  
C030094 LANORIS K. GARDNER-MYLES  
BY THE COURT:

Appellant's motion to recall the remittitur is granted. The remittitur issued on July 13, 1999, is ordered recalled, and the trial court clerk is directed to return the original remittitur to this court. The opinion of this court filed on May 13, 1999, is vacated, and the appeal is reinstated.

Upon receipt of the original remittitur from the trial court, the cause will be resubmitted, and the clerk of the court is directed to re-file the opinion in the above matter.

Dated: August 26, 1999

BLEASE, Acting P.J.

Civil CAMEO JAMES (Not for Publication)  
No. v.  
C030665 MICHAEL REX FAVERO  
Civil CAMEO JAMES  
No. v.  
C031526 MICHAEL REX FAVERO

The judgment of dismissal and the order after judgment denying an award of attorney's fees are reversed. Since Jones failed adequately to raise the claim in the trial court on which she prevails on appeal, the parties shall each bear their own costs of this appeal.

BLEASE, Acting J.

We concur: RAYE, J.  
CALLAHAN, J.

Juvenile In re ANNABELLE R. et al, Persons Coming Under the Juvenile Court  
Law.  
No. CHILDREN SERVICES DIVISION  
C032913 v.  
FIDEL R.  
BY THE COURT:

No claim of error having been raised by appellant Fidel R., the appeal filed June 17, 1999, is dismissed as abandoned. (In re Sade C. (1996) 13 Cal. 4<sup>th</sup> 952, 994.)

Dated: August 26, 1999

SCOTLAND, P.J.



**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
THURSDAY, AUGUST 26, 1999 CONTINUED**

9

Civil           ARLET ALLEN WYANT           (Not for Publication)  
No.            v.  
C030075       MARK L. ZILA

The judgment is affirmed. Zila shall recover costs on appeal.

RAYE, J.

We concur:           SCOTLAND, P.J.  
                          KOLKEY, J.

Civil           CHERI B. JOHNSON           (Not for Publication)  
No.            v.  
C028419       CRAIG A. MCCOLLAM  
C029093

The trial court orders are affirmed.

RAYE, J.

We concur:           BLEASE, Acting P.J.  
                          SIMS, J.

FRIDAY, AUGUST 27, 1999

Civil           M. A. SARNI  
No.            v.  
C032516       THERMALITO IRRIGATION DISTRICT et al.  
BY THE COURT:

Appellant's petition for rehearing is granted. The order filed on July 29, 1999, is vacated, and the appeal is reinstated.

Appellant's opening brief is due to be served and filed on or before September 27, 1999.

Dated:           August 27, 1999

BLEASE, Acting P.J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
FRIDAY, AUGUST 27, 1999 CONTINUED**

10

Civil           ANDRES MIGUEL DIESTRA  
No.             v.  
C032778       NAJAM A. AWAN AND TAYYIBA AWAN  
Civil           ANDRES MIGUEL DIESTRA  
No.             v.  
C033394       NAJAM A. AWAN AND TAYYIBA AWAN  
BY THE COURT:

The motion of appellant for consolidation of the above cases is granted. The cases are ordered consolidated for all further appellate procedures except that they will retain their respective case numbers. Whenever documents are submitted for filing by the parties, an original must be presented for each case number; however, if copies of documents are required pursuant to the California Rules of Court, the parties need only submit a maximum of four. The cases will be considered for decision together.

Appellant's combined opening brief is due on or before 30 days from the filing of the record on appeal in C033394.

Dated:           August 26, 1999

BLEASE, Acting P.J.

Crim.           THE PEOPLE                               (Not for Publication)  
No.             v.  
C031361       RONALD JOSEPH MURRAY  
                  Jai

SIMS, Acting P.J.

We concur:       DAVIS, J.  
                      RAYE, J.

Crim.           THE PEOPLE                               (Not for Publication)  
No.             v.  
C030178       KIMBERLY SIMPSON

The judgment (order granting probation) is affirmed.

BLEASE, J.

We concur:       SCOTLAND, P.J.  
                      CALLAHAN, J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
FRIDAY, AUGUST 27, 1999 CONTINUED**

11

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C029910 JAMES BERTRAM THOMAS

The judgment is modified to strike the \$10, 000 restitution fine imposed pursuant to section 1202.45. The judgment is affirmed, as modified. The trial court is ordered to amend the abstract of judgment to reflect the modification, and forward the amended abstract to the Department of Corrections.

CALLAHAN, J.

We concur: BLEASE, Acting P.J.  
SIMS, J.

Civil DONNA M. O.'SHEA (Not for Publication)  
No. v.  
C029892 COUNTY OF SACRAMENTO et al.

The judgment is affirmed. Defendants shall receive their costs on appeal.

SIMS, J.

We concur: SCOTLAND, P.J.  
NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)  
No. v.  
C029956 MICHELL LYNN SEEFELDT

The judgment is affirmed.

RAYE, J.

We concur: BLEASE, Acting P.J.  
HULL, J.

Civil LARRY R. ROPER (Not for Publication)  
No. v.  
C029491 RICH, FUIDGE, MORRIS & SANDBROOK et al.

The judgment of dismissal is reversed, and the trial court is directed to overrule to Roper's first amended complaint. Roper shall recover his costs on appeal.

BLEASE, Acting P.J.

We concur: SIMS, J..  
CALLAHAN, J.

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
FRIDAY, AUGUST 27, 1999 CONTINUED**

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Civil           BERNASCONI COMMERCIAL REAL ESTATE et al.  
No.             v.                               (Not for Publication)  
C029498       C B. COMMERCIAL REAL ESTATE GROUP et al.

The judgment is affirmed. Defendants shall recover their costs on appeal from plaintiff.

SIMS, J.

We concur:           SCOTLAND, P.J.  
                              NICHOLSON, J.

Civil           TERESA LYNN MIGUELGORRY  
No.             v.                               (Not for Publication)  
C028487       ROBERT BAYER et al.

The judgment is reversed. Plaintiff is awarded her costs on appeal.

CALLAHAN, J.

We concur:           BLEASE, Acting P.J.  
                              SIMS, J.